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COMMISSION ON JUDICIAL PERFORMANCE
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**REPORT CONCERNING ADOPTION ON JANUARY 28, 2009
OF ADDITIONS AND AMENDMENTS TO RULES OF THE
COMMISSION ON JUDICIAL PERFORMANCE**

Pursuant to its rule-making authority under article VI, section 18, subdivision (i) of the California Constitution, on November 25, 2008, the Commission on Judicial Performance circulated for public comment a set of three proposals for additions and changes to certain of its rules. Following consideration of the comments received, the commission adopted the proposed rule amendments at its meeting on January 28, 2009, as summarized below. The text of each addition and amendment is attached and the final version of the amended rules may be found on the commission's Web site at www.cjp.ca.gov.

I. EXPLANATION OF ADDITIONS AND AMENDMENTS

A. Amendments to rules 114(b) and 116(b) require the submission of a written statement of the basis of the judge's objection to the Notice of Intended Admonishment when making a demand for an appearance.

The amendments require a judge who demands an appearance to contest a notice of intended private or public admonishment to file written objections explaining the basis of the judge's objection to the admonishment. The amendments make the filing of written objections mandatory ensuring that the commission understands why the judge is contesting the admonishment prior to the appearance.

One comment was received. The California Judges Association (CJA) expressed no opposition to the amendment.

B. The addition of subdivision (d) to rules 114 and 116 and the amendment to rule 108 (e) provide that the 30 days provided to contest a notice of intended private or public admonishment may not be extended, but an extension of time to file a written statement of the judge's objections may be granted if a demand for an appearance has been timely filed.

Rules 114 (private admonishment procedure) and 116 (public admonishment procedure) provide that an admonishment becomes effective if the judge does not contest it within 30 days after the mailing of a notice of intended admonishment. The commission has been of the view that the 30 days is jurisdictional and cannot be extended. The rule revisions eliminate any ambiguity in this regard by explicitly providing that following issuance of a notice of intended private or public admonishment, an extension of time to demand an appearance before the commission or to demand formal proceedings is not permitted. However, there may be occasions where circumstances provide good cause for an extension of time to submit a written statement explaining the basis of the judge's objections. The revisions permit an extension of time to file a written statement of the judge's objections under those circumstances, so long as the judge has filed a demand for an appearance and waived the right to formal proceedings and to Supreme Court review within 30 days of the mailing of the notice of intended admonishment.

One comment was received from CJA expressing its approval of the amendment.

C. The addition of subdivision (o) to rule 102 authorizes notification of the closing of a complaint to a judge who is the subject of the complaint and has voluntarily provided information to the commission concerning the complaint.

At times, a subject judge learns of a pending complaint before the commission from a source other than the commission and voluntarily provides information to the commission before the matter has been opened for an investigation. The addition to the rule provides that, under those circumstances, the judge can be notified if the commission determines to close the complaint.

Two comments were received. CJA favors the amendment. A member of the public expressed concern regarding the confidentiality of the source of a complaint made to the commission. The basis of the comment was a misapprehension that disclosure of information to a judge concerning the source of a pending complaint comes from a commission member or commission staff. The amendment is intended to address situations in which a judge learns of a pending complaint from a source other than the commission or commission staff. The amendment does not authorize the commission to inform the judge of the source of the complaint, only that the matter has been closed.

II. TEXT OF AMENDED RULES

AMENDMENT TO RULE 114 (b)

(b) (Appearance before the commission) The judge may, within 30 days of the mailing of a notice of intended private admonishment, file with the commission ~~written objections to the intended private admonishment, waive the right to formal proceedings under rule 118 and to review by the Supreme Court, and a written demand for an appearance before the commission to contest the intended private admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court.~~ *A judge who demands an appearance before the commission to contest a notice of intended private admonishment shall, within 30 days of the mailing of the notice of intended private admonishment, submit a written statement of the judge's objections to the commission's proposed admonishment. The statement shall include the basis of the judge's objection.*

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AMENDMENT TO RULE 116 (b)

(b) (Appearance before the commission) The judge may, within 30 days of the mailing of a notice of intended public admonishment, file with the commission ~~written objections to the intended public admonishment, waive the right to formal proceedings under rule 118 and to review by the Supreme Court, and a written demand for an appearance before the commission to contest the intended public admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court.~~ *A judge who demands an appearance before the commission to contest a notice of intended public admonishment shall, within 30 days of the mailing of the notice of intended public admonishment, submit a written statement of the judge's objections to the commission's proposed admonishment. The statement shall include the basis of the judge's objection.*

* * *

ADDITION OF SUBDIVISION (d) TO RULE 114

(d) (Extensions of time) *The 30 days provided to contest an intended private admonishment pursuant to subdivisions (b) and (c) may not be extended. The time for filing a written statement of the judge's objections to the intended admonishment pursuant to subdivision (b) may be extended by the chairperson or the chairperson's designee upon a showing of good cause, if the judge has, within 30 days of the mailing of a notice of intended private admonishment, filed a demand for an appearance with a personal waiver of the right to formal proceedings and to review by the Supreme Court.*

ADDITION OF SUBDIVISION (d) TO RULE 116

(d) (Extensions of time) *The 30 days provided to contest an intended public admonishment pursuant to subdivisions (b) and (c) may not be extended. The time for filing a written statement of the judge's objections to the intended admonishment pursuant to subdivision (b) may be extended by the chairperson or the chairperson's designee upon a showing of good cause, if the judge has, within 30 days of the mailing of a notice of intended public admonishment, filed a demand for an appearance with a personal waiver of the right to formal proceedings and to review by the Supreme Court.*

AMENDMENT TO RULE 108(e)

(e) (Other extensions of time) *Any other or further extension of time, other than to demand an appearance before the commission to contest an intended private or public admonishment pursuant to rule 114(b) or 116(b), or to demand formal proceedings pursuant to rule 114(c) or 116(c), may be granted by the chairperson only upon a showing of good cause.*

ADDITION OF SUBDIVISION (o) TO RULE 102

(o) (Disclosure of closing to judge who provides information to the commission) *Upon completion of the commission's review of a complaint or an investigation, the commission may notify a judge who is the subject of a complaint and has voluntarily provided information to the commission concerning the complaint, that the commission has found no basis for action against the judge or determined not to proceed further in the matter. The notification shall be in writing.*